

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2003-0018

In the Matter of Permits 17877A, 17877B, 17878A and 17878B
(Applications 25887A, 25887B, 25888A and 25888B)

of
MIDDLERIDGE VINEYARDS
and
Two Reservoirs Operated
by
M/R VINEYARDS

SOURCES: Unnamed Streams and Coleman Creek within the Russian River watershed

COUNTY: Mendocino

**ORDER APPROVING A SETTLEMENT AGREEMENT BETWEEN
DIVISION OF WATER RIGHTS, MIDDLERIDGE VINEYARDS, AND
M/R VINEYARDS**

BY THE EXECUTIVE DIRECTOR

1.0 INTRODUCTION

By this Order, the Executive Director of the State Water Resources Control Board (SWRCB) approves the attached settlement agreement between Middleridge Vineyards (Middleridge), M/R Vineyards (M/R) (hereinafter collectively referred to as the "Diverter(s)"), and the SWRCB's Division of Water Rights (Division). The Division and the Diverter(s) have agreed to settle the issues related to the Diverter(s)' unauthorized diversions of water and violations of permit terms and conditions in lieu of the Division taking enforcement action pursuant to Water Code sections 1052 and 1831. Government Code section 11415.60 authorizes the issuance of an order or decision pursuant to a settlement agreement.

2.0 BACKGROUND

Water Code section 1052, subdivision (a), provides that the diversion or use of water, other than as authorized, is considered a trespass. The SWRCB may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs. (Wat. Code, § 1052, subd. (b)) The SWRCB also may issue a cease and desist order in response to a trespass or a violation of a permit or license term or condition. (Wat. Code, § 1831, subds. (a), (d))

Middleridge and M/R are both owned by partnerships with Mr. Wendell Nicolaus as the managing partner. Middleridge diverts water from Unnamed Streams to frost protect and irrigate approximately 181.5 acres of vineyard in Mendocino County and has permits to divert water from Coleman Creek. Middleridge holds Permits 17877A, 17877B, 17878A, and 17878B (Applications 25887A, 25887B, 25888A, and 25888B), and seeks the right to divert water under Application 29783. M/R diverts water from Dooley Creek and, as a member of the East Sanel Irrigation Company (ESIC), diverts water from the Russian River to frost protect

and irrigate approximately 179 acres. M/R seeks the right to divert water under Applications 30015 and 31296. ESIC holds License 11727 (Application 25596) and seeks the right to divert water under Applications 31179 and 31261.

On April 24, 2002, Division staff conducted a compliance inspection of the projects authorized by Permits 17877A, 17877B, 17878A, 17878B, and License 11727 and determined that Middleridge operates one reservoir without an appropriative water right permit or license authorizing the storage of water for consumptive use, and that Middleridge has changed its place of use in violation of its permit terms. The Division also determined that M/R operates two reservoirs without an appropriative water right permit or license authorizing the storage of water for consumptive use.

The Division and the Diverters have agreed to settle this matter in lieu of the Division taking enforcement action pursuant to Water Code sections 1052 and 1831. The Diverters agree to remit one total payment of \$3,500 to the SWRCB and acknowledge that Middleridge diverted water without authorization and violated the place of use term in its permits. The Division agrees not to take formal enforcement action for the trespasses and permit violations identified in the settlement agreement. The attached settlement agreement also identifies corrective actions that the Diverters agree to and must take to end unauthorized diversions and threat thereof, and to end permit violations.

ORDER

IT IS HEREBY ORDERED THAT:

1. The attached Settlement Agreement between the Division and the Diverters is approved as a decision by settlement pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.
2. Approval of the Settlement Agreement between the Division and the Diverters shall not limit the authority of the Executive Director or the Chief of the Division of Water Rights, as delegated, to initiate any enforcement actions for any future unauthorized diversions, violations of terms and conditions of the permits, or violations of the terms of the Settlement Agreement.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY HMS for

Celeste Cantú
Executive Director

Dated: NOV 14 2003